

State of Utah  
Administrative Rule Analysis

## NOTICE OF PROPOSED RULE

- \* The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- \* Please address questions regarding information on this notice to the agency.
- \* The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- \* The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:		Date filed:	
State Admin Rule Filing Id:		Time filed:	
	<b>Agency No.</b>	<b>Rule No.</b>	<b>Section No.</b>
<b>Utah Admin. Code Ref (R no.):</b>	<b>R</b> 156	- 11a	-
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>	-	-

<b>1.</b>	<b>Agency:</b>	Commerce/Division of Occupational and Professional Licensing		
	<b>Room no.:</b>			
	<b>Building:</b>	Heber M. Wells Building		
	<b>Street address 1:</b>	160 East 300 South		
	<b>Street address 2:</b>			
	<b>City, state, zip:</b>	Salt Lake City UT 84111-2316		
	<b>Mailing address 1:</b>	PO Box 146741		
	<b>Mailing address 2:</b>			
	<b>City, state, zip:</b>	Salt Lake City UT 84114-6741		
	<b>Contact person(s):</b>			
	<b>Name:</b>	<b>Phone:</b>	<b>Fax:</b>	<b>E-mail:</b>
	Sally Stewart	801-530-6179	801-530-6511	sstewart@utah.gov

(Interested persons may inspect this filing at the above address or at the Division of Administrative Rules during business hours)

<b>2.</b>	<b>Title of rule or section (catchline):</b>
	Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule
<b>3.</b>	<b>Type of notice:</b>
	New ____; Amendment XX; Repeal ____; Repeal and Reenact ____
<b>4.</b>	<b>Purpose of the rule or reason for the change:</b>
	The Division and the Barbering, Cosmetology/Barbering, Esthetics, Electrology and Nail Technology Licensing Board are proposing amendments in this filing is to implement required reduction in cosmetologist/barber curriculum hour changes and other technical changes resulting from HB 238 which was passed during the 2013 General Session of the Legislature and was effective on March 12, 2013. The proposed amendments also provide a time period for retention of records for schools that cease to operate and allows for substantially equivalent examinations.
<b>5.</b>	<b>This change is a response to comments from the Administrative Rules Review Committee.</b>
	No XXX; Yes ____
<b>6.</b>	<b>Summary of the rule or change:</b>
	Section 102: Amendments in this section are statute update citation changes required as a result of the legislation changes to the governing statute Section 302a: Amendment in paragraph (3) permits substantially equivalent examinations from other states to be accepted toward requirements for licensure. Section 605: Amendments establish a minimum ten year time period for retention and reporting student hours for schools that cease operation. Section 705: This section is changed to specify the required change in cosmetology/barber curriculum hours from 2,000 hours to 1,600 hours.

7.	<b>Aggregate anticipated cost or savings to:</b>
	<b>A) State budget:</b>
	<b>Affected:</b> No ____; Yes XXX
	<p>The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendment is made effective. Any costs incurred will be absorbed in the Division's current budget.</p>
	<b>B) Local government:</b>
	<b>Affected:</b> No XXX; Yes ____
	<p>The proposed amendments only applies to various license classifications provided in Title 58, Chapter 11a and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.</p>
	<b>C) Small businesses ("small business" means a business employing fewer than 50 persons):</b>
	<b>Affected:</b> No Yes XXXX
	<p>The proposed amendments apply to various license classifications provided in Title 58, Chapter 11a and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business or qualify as a small business; however, while the change to the required cosmetology/barber hours may affect small businesses, cost or savings impact were considered in the passage of HB 238 by the 2013 Legislature. The reduction in cosmetology/barber school hours from 2,000 to 1,600 should reduce the regulatory burden for Utah citizens. The addition of a time period for the retention of records may result in additional cost to the named individual or company holding those records; however, availability of that information and acceptance of substantially equivalent examinations should facilitate the licensure of professionals who may work in a small business or qualify as a small business. Any total costs or savings cannot be quantified due to a wide range of circumstances.</p>
	<b>D) Persons other than small businesses, businesses, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):</b>
	<b>Affected:</b> No; Yes XXX__
	<p>The proposed amendments apply to various license classifications provided in Title 58, Chapter 11a and applicants for licensure in those classifications. The cost or savings impact of the reduction in cosmetology/barber school hours from 2,000 to 1,600 were considered in the passage of HB 238 by the 2013 Legislature. The reduction in cosmetology/barber school hours from 2,000 to 1,600 should also reduce the regulatory burden for Utah citizens. The addition of a time period for the retention of records may result in additional cost to the named individual or company holding those records; however, availability of that information and acceptance of substantially equivalent examinations should facilitate the licensure of professionals. Any total costs or savings cannot be quantified due to a wide range of circumstances.</p>
8.	<b>Compliance costs for affected persons:</b>
	<p>The proposed amendments apply to various license classifications provided in Title 58, Chapter 11a and applicants for licensure in those classifications. The cost or savings impact of the reduction in cosmetology/barber school hours from 2,000 to 1,600 were considered in the passage of HB 238 by the 2013 Legislature. The reduction in cosmetology/barber school hours from 2,000 to 1,600 should also reduce the regulatory burden for Utah citizens. The addition of a time period for the retention of records may result in additional cost to the named individual or company holding those records; however, availability of that information and acceptance of substantially equivalent examinations should facilitate the licensure of professionals. Any total costs or savings cannot be quantified due to a wide range of circumstances.</p>
9.	<b>A) Comments by the department head on the fiscal impact the rule may have on businesses:</b>
	<p>As stated in the rule analysis, small businesses offering prelicensing education might experience costs in order to maintain student records over a period of ten years. These costs will vary, depending on each schools' storage method. However, it is anticipated that the associated costs will be minimal, particularly as to schools that maintain their records electronically.</p>
	<b>B) Name and title of department head commenting on the fiscal impacts:</b>
	<p>Francine A. Giani, Executive Director</p>
10.	<b>This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.</b>
	<b>State code or constitution citations (required)</b> (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :
	<div> <div>Section 58-11a-101</div> <div>Subsection 58-1-106(1)(a)</div> </div>

Subsection 58-1-202(1)(a)		
11.	<b>This rule adds, updates, or removes the following title of materials incorporated by references</b> (a copy of materials incorporated by reference must be submitted to the Division of Administrative Rules; <i>if none, leave blank</i> ):	
	<b>First Incorporation</b>	<b>Second Incorporation</b>
	<b>Official Title of Materials Incorporated (from title page)</b>	
	<b>Publisher</b>	
	<b>Date Issued</b>	
	<b>Issue, or version</b>	
	<b>ISBN Number (optional)</b>	
	<b>ISSN Number (optional)</b>	
	<b>Cost of Incorporated Reference</b>	
	<b>Action: Adds, updates, or removes</b>	
(If this rule incorporates more than two items by reference, please attach additional pages)		
12.	<b>The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
	<b>A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):</b>	07/31/2013
	<b>B) A public hearing (optional) will be held:</b>	
	<b>On (mm/dd/yyyy):</b>	<b>At (hh:mm AM/PM):</b>
	07/29/2013	9:00 AM
		<b>At (place):</b>
		160 East 300 South, Conference Room 474, Salt Lake City, Utah
13.	<b>This rule change may become effective on (mm/dd/yyyy):</b>	08/07/2013
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.		
14.	<b>Indexing information -- keywords</b> (maximum of four, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid"); may not include the name of the agency:	
	cosmetologists/barbers	estheticians
	electrologists	nail technicians
15.	<b>Attach an RTF document containing the text of this rule change (filename):</b>	R156-11a.pro
<b>To the agency:</b> Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> , and delaying the first possible effective date.		
<b>AGENCY AUTHORIZATION</b>		
<b>Agency head or designee, and title:</b>	Mark B. Steinagel, Director	<b>Date (mm/dd/yyyy):</b> 06/04/2013

**R156. Commerce, Occupational and Professional Licensing.**

**R156-11a. Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule.**

**R156-11a-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 11a, as used in Title 58, Chapters 1 and 11a or this rule:

(1) "Advanced pedicures", as used in Subsection 58-11a-102(~~[31]~~34) (a) (i) (D), means any of the following while caring for the nails, cuticles or calluses of the feet:

(a) utilizing manual instruments, implements, advanced electrical equipment, tools, or microdermabrasion for cleaning, trimming, softening, smoothing, or buffing;

(b) utilizing blades, including corn or callus planer or rasp, for smoothing, shaving or removing dead skin from the feet as defined in Section R156-11a-611; or

(c) utilizing topical products and preparations for chemical exfoliation as defined in Subsection R156-11a-610(4).

(2) "Aroma therapy" means the application of essential oils which are applied directly to the skin, undiluted or in a misted dilution with a carrier oil or lotion. for varied applications such as massage, hot packs, cold packs, compress, inhalation, steam or air diffusion, or in hydrotherapy services.

(3) "BCA acid" means bicloroacetic acid.

(4) "Body wraps", as used in Subsection 58-11a-102(~~[31]~~34) (a) (i) (A), means body treatments utilizing products or equipment to enhance and maintain the texture, contour, integrity and health of the skin and body.

(5) "Chemical exfoliation", as defined in Subsections 58-11a-102(~~[31]~~34) (a) (i) (C) and R156-11a-610(4), means a resurfacing procedure performed with a chemical solution or product for the purpose of removing superficial layers of the epidermis to a point no deeper than the stratum corneum.

(6) "Dermabrasion or open dermabrasion" means the surgical application of a wire or diamond frieze by a physician to abrade the skin to the epidermis and possibly down to the papillary dermis.

(7) "Dermaplane" means the use of a scalpel or bladed instrument under the direct supervision of a health care practitioner to shave the upper layers of the stratum corneum.

(8) "Direct supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4) (a).

(9) "Equivalent number of credit hours" means:

(a) the following conversion table if on a semester basis:

(i) theory - 1 credit hour - 30 clock hours;

(ii) practice - 1 credit hour - 30 clock hours; and

(iii) clinical experience - 1 credit hour - 45 clock hours; and

(b) the following conversion table if on a quarter basis:

- (i) theory - 1 credit hour - 20 clock hours;
  - (ii) practice - 1 credit hour - 20 clock hours; and
  - (iii) clinical experience - 1 credit hour - 30 clock hours.
- (10) "Exfoliation" means the sloughing off of non-living skin cells by superficial and non-invasive means.
- (11) "Extraction" means the following:
- (a) "advanced extraction", as used in Subsections 58-11a-102(~~31~~34) (a) (i) (F) and R156-11a-611(2) (b), means to perform extraction with a lancet or device that removes impurities from the skin;
  - (b) "manual extraction", as used in Subsection 58-11a-102(25) (a), means to remove impurities from the skin with protected fingertips, cotton swabs or a loop comedone extractor.
- (12) "Galvanic current" means a constant low-voltage direct current.
- (13) "General supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4) (c).
- (14) "Health care practitioner" means a physician/surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, a podiatrist under Title 58, Chapter 5A, Podiatric Physician Licensing Act, or a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Practice Act, acting within the appropriate scope of practice.
- (15) "Hydrotherapy", as used in Subsection 58-11a-102(~~31~~34) (a) (i) (B), means the use of water for cosmetic purposes or beautification of the body.
- (16) "Indirect supervision" means the supervising instructor who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4) (b).
- (17) "Limited chemical exfoliation" means a non-invasive chemical exfoliation and is further defined in Subsection R156-11a-610(3).
- (18) "Lymphatic massage", as used in Subsections 58-11a-102(~~31~~34) (a) (ii) and 58-11a-302(11) [~~(a) (i) (C)~~] (e), means a method using a light rhythmic pressure applied by manual or other means to the skin using specific lymphatic maneuvers to promote drainage of the lymphatic fluid through the tissue.
- (19) "Manipulating", as used in Subsection 58-11a-102(~~25~~28) (a), means applying a light pressure by the hands to the skin.
- (20) "Microdermabrasion", as used in Subsection 58-11a-102(~~31~~34) (a) (i) (E), means a gentle, progressive, superficial, mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system.
- (21) "Patch test" or "predisposition test" means applying a small amount of a chemical preparation to the skin of the arm or behind the ear

to determine possible allergies of the client to the chemical preparation.

(22) "Pedicure" means any of the following:

(a) cleaning, trimming, softening, or caring for the nails, cuticles, or calluses of the feet;

(b) the use of manual instruments or implements on the nails, cuticles, or calluses of the feet;

(c) callus removal by sanding, buffing, or filing; or

(d) massaging of the feet or lower portion of the leg.

(23) "TCA acid" means trichloroacetic acid.

(24) "Unprofessional conduct" is further defined, in accordance with Section 58-1-501, in Section R156-11a-502.

#### **R156-11a-302a. Qualifications for Licensure - Examination Requirements.**

In accordance with Section 58-11a-302, the examination requirements for licensure are established as follows:

(1) Applicants for each classification listed below shall pass within one year prior to the date of application, the respective examination with a passing score of at least 75% as determined by the examination provider.

(a) Applicants for licensure as a barber shall pass the National Interstate Council of State Boards of Cosmetology (NIC) Barber Theory and Practical Examinations.

(b) Applicants for licensure as a cosmetologist/barber shall pass the NIC Cosmetology/Barber Theory and Practical Examinations.

(c) Applicants for licensure as an electrologist shall pass the NIC Electrologist Theory and Practical Examinations.

(d) Applicants for licensure as a basic esthetician shall pass the NIC Esthetics Theory and Practical Examinations.

(e) Applicants for licensure as a master esthetician shall pass the NIC Master Esthetician Theory and Practical Examinations.

(f) Applicants for licensure as a barber instructor, cosmetologist/barber instructor, electrology instructor, esthetician instructor, or nail technology instructor shall pass the NIC Instructor Examination.

(g) Applicants for licensure as a nail technician shall pass the NIC Nail Technician Theory and Practical Examinations.

(2) Applicants for licensure shall pass with a score of at least 75% the Utah Barber, Cosmetologist/Barber, Esthetician, Electrologist and Nail Technician Law and Rule Examination.

(3) Any substantially equivalent theory, practical or instructor examination approved by the licensing authority of any other state is acceptable for any of the examinations specified in Subsection(1).

#### **R156-11a-605. Standards for Protection of Students.**

In accordance with Subsections 58-11a-302(3)(c)(iii) and (iv), (6)(c)(iii) and (iv), (9)(c)(iii) and (iv), (13)(c)(iii) and (iv), (16)(c)(iii) and (iv), standards for the protection of students shall

include the following:

(1) In the event a school ceases to operate for any reason, the school shall:

(a) notify the Division within 15 days by registered or certified mail; and

(b) ~~[shall]~~name a trustee who ~~[is]~~shall be responsible for:

(i) maintaining the student records for a minimum period of ten years; and

(ii) ~~[- Upon request, the trustee shall provide]~~providing information such as accumulated student hours and dates of attendance during that time.

(2) Schools shall provide a copy of the written contract prepared in accordance with Section R156-11a-607 to each student.

(3) Schools shall not use students to perform maintenance, janitorial or remodeling work such as scrubbing floor, walls or toilets, cleaning windows, waxing floors, painting, decorating, or performing any outside work on the grounds or building. Students may be required to clean up after themselves and to perform or participate in daily cleanup of work areas, including the floor space, shampoo bowls, laundering of towels and linen and other general cleanup duties that are related to the performance of client services.

(4) Schools shall not require students to sell products applicable to their industry as a condition to graduate, but may provide instruction in product sales techniques as part of their curriculums.

(5) Schools shall keep a daily written record of student attendance.

(6) Schools shall not be permitted to remove hours earned by a student. If a student is late for class, the school may require the student to retake the class before giving credit for the class. Schools may require a student to take a refresher course or retake a class toward graduation based upon an evaluation of the student's level of competency.

(7) In accordance with Subsection 58-11a-502(3)(a), schools shall not require students to participate in hair removal training that pertains to the genitals or anus of a client.

#### **R156-11a-705. Curriculum for Cosmetology/Barber Schools.**

In accordance with Subsection 58-11a-302(6)(c)(iv), the curriculum for a cosmetology/barber school shall consist of ~~[2,000]~~1,600 hours of instruction in all of the following subject areas:

(1) introduction consisting of:

(a) history of barbering, cosmetology/barbering, esthetics, nail technology; and

(b) overview of the curriculum;

(2) personal, client and salon safety including:

(a) aseptic techniques and sanitary procedures;

(b) disinfection and sterilization methods and procedures;

(c) health risks to the cosmetologist/barber;

(3) business and salon management including:

- (a) developing clientele;
- (b) professional image;
- (c) professional ethics;
- (d) professional associations;
- (e) public relations; and
- (f) advertising;
- (4) legal issues including:
  - (a) malpractice liability;
  - (b) regulatory agencies; and
  - (c) tax laws;
- (5) human immune system;
- (6) diseases and disorders of skin, nails, hair, and scalp

including:

- (a) bacteriology;
- (b) sanitation;
- (c) sterilization;
- (d) decontamination; and
- (e) infection control;
- (7) implements, tools and equipment for cosmetology, barbering,

basic esthetics and nail technology, including:

- (a) high frequency or galvanic current; and
- (b) heat lamps;
- (8) first aid;
- (9) anatomy;

(10) science of cosmetology/barbering, basic esthetics and nail technology;

- (11) analysis of the skin, hair and scalp;
- (12) physiology of the human body including skin and nails;
- (13) electricity and light therapy;
- (14) limited chemical exfoliation including:

- (a) pre-exfoliation consultation;
- (b) post-exfoliation treatments; and
- (c) chemical reactions;

(15) chemistry for cosmetology/barbering, basic esthetics and nail technology;

(16) temporary removal of superfluous hair including by waxing;

(17) properties of the hair, skin and scalp;

(18) basic hairstyling including:

- (a) wet and thermal styling;
- (b) permanent waving;
- (c) hair coloring;
- (d) chemical hair relaxing; and
- (e) thermal hair straightening;

(19) haircuts including:

- (a) draping;
- (b) clipper variations;
- (c) scissor cutting;



- (d) shaving; and
- (e) wigs and artificial hair;
- (20) razor cutting for men;
- (21) mustache and beard design;
- (22) basic esthetics including:
  - (a) treatment of the skin, manual and mechanical;
  - (b) packs and masks;
  - (c) aroma therapy;
  - (d) chemistry of cosmetics;
  - (e) application of makeup including:
    - (i) application of artificial eyelashes;
    - (ii) arching of the eyebrows;
    - (iii) tinting of the eyelashes and eyebrows;
  - (f) massage of the face and neck; and
  - (g) natural manicures and pedicures;
- (23) medical devices;
- (24) cardio pulmonary resuscitation (CPR);
- (25) artificial nail techniques consisting of:
  - (a) wraps;
  - (b) nail tips;
  - (c) gel nails;
  - (d) sculptured and other acrylic nails; and
  - (e) nail art;
- (26) pedicures and massaging of the lower leg and foot;
- (27) elective topics; and
- (28) Utah Cosmetology/Barber Examination review.

**KEY: cosmetologists/barbers, estheticians, electrologists, nail technicians**

**Date of Enactment or Last Substantive Amendment: ~~[August 23, 2011]~~ 2013**

**Notice of Continuation: February 6, 2012**

**Authorizing, and Implemented or Interpreted Law: 58-11a-101; 58-1-106(1) (a) ; 58-1-202(1) (a)**